



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 21 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ari D. Levine
Assistant General Counsel &
Director, Regulatory Affairs
645 Penn Street
Reading, PA 19612-4205

SUBJ: Westgate Trailer Park Site
Greer, South Carolina
Final Demand for Payment of
Response Costs

Dear Mr. Levine:

I received your letter of May 28, 1999, suggesting a compromise of EPA past response costs at the Westgate Trailer Park Site.

The essential point of your letter seems to be that Exide Corporation agreed with the State of South Carolina, early on in the Superfund process, to provide cleanup response at the Westgate site. Hence, there was no need for EPA to investigate the source of, or Exide's liability for, lead contamination on the site, and the incurrence of the costs associated with the investigation was also unnecessary. EPA should, therefore, be willing to compromise its costs incurred in the investigation and confirmation of Exide's Greer, South Carolina lead-acid battery manufacturing facility as the source of lead contamination in soils on the adjacent Westgate Trailer Park property. As discussed below, EPA takes a different view of this issue.

On April 9, 1996, Exide entered into a consent order with the South Carolina Department of Health and Environmental Control (DEHEC), agreeing as follows:

If the Department determines that remediation of the Westgate Trailer Park is necessary, Exide shall submit a Remediation Plan for Westgate Trailer Park to address removal and proper disposal of all contaminated soils as deemed necessary by the Department.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER

61 FORSYTH STREET

ATLANTA, GEORGIA 30303-8960

JUN 21 1999

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Ari D. Levine
Assistant General Counsel &
Director, Regulatory Affairs
645 Penn Street
Reading, PA 19612-4205

SUBJ: Westgate Trailer Park Site
Greer, South Carolina
Final Demand for Payment of
Response Costs

Dear Mr. Levine:

I received your letter of May 28, 1999, suggesting a compromise of EPA past response costs at the Westgate Trailer Park Site.

The essential point of your letter seems to be that Exide Corporation agreed with the State of South Carolina, early on in the Superfund process, to provide cleanup response at the Westgate site. Hence, there was no need for EPA to investigate the source of, or Exide's liability for, lead contamination on the site, and the incurrence of the costs associated with the investigation was also unnecessary. EPA should, therefore, be willing to compromise its costs incurred in the investigation and confirmation of Exide's Greer, South Carolina lead-acid battery manufacturing facility as the source of lead contamination in soils on the adjacent Westgate Trailer Park property. As discussed below, EPA takes a different view of this issue.

On April 9, 1996, Exide entered into a consent order with the South Carolina Department of Health and Environmental Control (DEHEC), agreeing as follows:

If the Department determines that remediation of the Westgate Trailer Park is necessary, Exide shall submit a Remediation Plan for Westgate Trailer Park to address removal and proper disposal of all contaminated soils as deemed necessary by the Department.

In your letter of May 28, 1999, you advise that Exide, in January 1997, delivered to DEHEC Exide's Remedial Investigation Report, summarizing the Company's investigation of the Westgate site. The site investigation report stated that Exide's consultant was unable to establish a direct connection between lead detected in soils at Westgate and Exide's Greer, South Carolina plant operations. The report states:

The Exide air monitoring station located nearest to the trailer park is the # 1 sampler ... This data shows that the measured lead-in-air near the park has been below the National Ambient Air Quality Standard (NAAQS) for lead of 1.5 ug/m3, and has generally decreased over time. This indicates that emissions from the Exide facility have not caused residents of Westgate Trailer Park to be exposed to lead-in-air levels above the NAAQS. The NAAQS defines a level of air quality that is protective of human health and the environment. This lead-in-air data is therefore also an indication that air emissions from the facility did not contribute to soil impacts in the trailer park.

In its letter accompanying the investigation report to DEHEC, Exide requested a meeting with DEHEC to "develop goals for any future activity in this matter (the Westgate site)." This reply falls somewhat short of a resounding assurance of Exide's willingness to proceed with site cleanup, and the claim, made in the site investigation report, that Exide did not contribute to lead contamination in the trailer park was not retracted.

DEHEC delivered a copy of Exide's investigation report to Region 4, expressing concern as to Exide's contentions regarding the lack of evidence of the Company's responsibility for lead contamination in soils at Westgate. Seeking to support the State's enforcement effort, EPA requested, in March 1997, the National Enforcement Investigations Center's assistance in the identifying the source of lead contamination in soils at the trailer park.

Exide, in its June 10, 1997 letter, assured DEHEC of Exide's intention "to fully comply with (the DEHEC consent order) by submitting a Remediation Plan." In addition to other information regarding blood-lead testing and the EPA-recommended 400 ppm cleanup level for lead contaminated soils, Exide also requested "all information, reports or other documents which support the conclusion that Exide is responsible for the lead concentrations found in the soils to be remediated."

In your letter of May 28, 1999, you advise that Exide, in January 1997, delivered to DEHEC Exide's Remedial Investigation Report, summarizing the Company's investigation of the Westgate site. The site investigation report stated that Exide's consultant was unable to establish a direct connection between lead detected in soils at Westgate and Exide's Greer, South Carolina plant operations. The report states:

The Exide air monitoring station located nearest to the trailer park is the # 1 sampler ... This data shows that the measured lead-in-air near the park has been below the National Ambient Air Quality Standard (NAAQS) for lead of 1.5 ug/m³, and has generally decreased over time. This indicates that emissions from the Exide facility have not caused residents of Westgate Trailer Park to be exposed to lead-in-air levels above the NAAQS. The NAAQS defines a level of air quality that is protective of human health and the environment. This lead-in-air data is therefore also an indication that air emissions from the facility did not contribute to soil impacts in the trailer park.

In its letter accompanying the investigation report to DEHEC, Exide requested a meeting with DEHEC to "develop goals for any future activity in this matter (the Westgate site)." This reply falls somewhat short of a resounding assurance of Exide's willingness to proceed with site cleanup, and the claim, made in the site investigation report, that Exide did not contribute to lead contamination in the trailer park was not retracted.

DEHEC delivered a copy of Exide's investigation report to Region 4, expressing concern as to Exide's contentions regarding the lack of evidence of the Company's responsibility for lead contamination in soils at Westgate. Seeking to support the State's enforcement effort, EPA requested, in March 1997, the National Enforcement Investigations Center's assistance in the identifying the source of lead contamination in soils at the trailer park.

Exide, in its June 10, 1997 letter, assured DEHEC of Exide's intention "to fully comply with (the DEHEC consent order) by submitting a Remediation Plan." In addition to other information regarding blood-lead testing and the EPA-recommended 400 ppm cleanup level for lead contaminated soils, Exide also requested "all information, reports or other documents which support the conclusion that Exide is responsible for the lead concentrations found in the soils to be remediated."

In July 1997, pursuant to the 1996 consent order with the State, Exide presented a remediation plan, for the trailer park, which states (p. 5):

A review of potential source mechanisms, air emissions and surface water runoff, was conducted as part of the RI. Available air monitoring data does not indicate that emissions from the Exide facility contributed to soil impacts in the trailer park. No surface water runoff from the Exide facility flows in the direction of the trailer park, therefore, surface runoff is not a possible contributor. Nevertheless, SC DEHEC has requested that Exide provide this Remediation Plan for the removal of soil with concentrations greater than 400 ppm.

Again, Exide's expression of its willingness to proceed with cleanup at the trailer park appears lukewarm. Exide continues to complain that lead in soils at Westgate did not originate from the Exide plant, yet DEHEC persists in its demands for a cleanup plan from Exide. Exide issued this complaint in both the site investigation report and in the remediation plan.

By letter of August 13, 1997, DEHEC addressed Exide's air data and conclusions regarding the impact of air emissions on trailer park soils. DEHEC commented that "No data has been presented (by Exide) on the potential outfall of the lead particles and the accumulation of lead over a period of time."

DEHEC again wrote Exide on April 14, 1998, notifying Exide of DEHEC's determination that cleanup to 400 ppm of lead-contaminated surface soils in the trailer park was required of Exide. DEHEC's decision was based on sampling data indicating the presence of lead-in-soil contamination in excess of 400 ppm and the continuing presence on the site of an exposure pathway evidenced by "elevated blood lead levels in residents several years after the 1995 EPA removal action." Due to the lack of soil data in the "3 to 9 inch zone," DEHEC required a soil removal to a minimum of six inches instead of the three-inch depth proposed in Exide's July 1997 Remediation Plan.

By Notice of Violation dated March 17, 1999, DEHEC notified Exide of Exide's violation of the April 1996 consent order "by not submitting a Remediation Plan for the Westgate Trailer Park ..."

On December 24, 1999, EPA forwarded to Exide notice of potential liability and demand for payment of EPA past costs incurred at Westgate. The sum demanded was \$306,569.02. Exide

In July 1997, pursuant to the 1996 consent order with the State, Exide presented a remediation plan, for the trailer park, which states (p. 5):

A review of potential source mechanisms, air emissions and surface water runoff, was conducted as part of the RI. Available air monitoring data does not indicate that emissions from the Exide facility contributed to soil impacts in the trailer park. No surface water runoff from the Exide facility flows in the direction of the trailer park, therefore, surface runoff is not a possible contributor. Nevertheless, SC DEHEC has requested that Exide provide this Remediation Plan for the removal of soil with concentrations greater than 400 ppm.

Again, Exide's expression of its willingness to proceed with cleanup at the trailer park appears lukewarm. Exide continues to complain that lead in soils at Westgate did not originate from the Exide plant, yet DEHEC persists in its demands for a cleanup plan from Exide. Exide issued this complaint in both the site investigation report and in the remediation plan.

By letter of August 13, 1997, DEHEC addressed Exide's air data and conclusions regarding the impact of air emissions on trailer park soils. DEHEC commented that "No data has been presented (by Exide) on the potential outfall of the lead particles and the accumulation of lead over a period of time."

DEHEC again wrote Exide on April 14, 1998, notifying Exide of DEHEC's determination that cleanup to 400 ppm of lead-contaminated surface soils in the trailer park was required of Exide. DEHEC's decision was based on sampling data indicating the presence of lead-in-soil contamination in excess of 400 ppm and the continuing presence on the site of an exposure pathway evidenced by "elevated blood lead levels in residents several years after the 1995 EPA removal action." Due to the lack of soil data in the "3 to 9 inch zone," DEHEC required a soil removal to a minimum of six inches instead of the three-inch depth proposed in Exide's July 1997 Remediation Plan.

By Notice of Violation dated March 17, 1999, DEHEC notified Exide of Exide's violation of the April 1996 consent order "by not submitting a Remediation Plan for the Westgate Trailer Park ..."

On December 24, 1999, EPA forwarded to Exide notice of potential liability and demand for payment of EPA past costs incurred at Westgate. The sum demanded was \$306,569.02. Exide

initially refused any payment of such costs as not required due to the fact, according to Exide's calculation, that any action pursued for their payment would be time-barred under the applicable statute of limitations. When EPA met that response with proof that the statute has not yet expired, Exide offered to negotiate a compromise of the costs demanded. Exide's May 28, 1999 letter contains Exide's latest offer of compromise, arguing that Exide announced its willingness, in the June 1997 letter to DEHEC, to meet with DEHEC and develop goals for "future activity" at Westgate.

The documents delivered to EPA in May 1999 contain numerous assurances of Exide's willingness to discuss and negotiate the preparation and implementation of a remedial action plan for cleanup at Westgate. Such assurances date back to the April 1996 consent order with the State, and continue up to and through the date of Exide's letter of May 28, 1999 to EPA. Exide agreed under the State's consent order to conduct remedial action if DEHEC determined that cleanup was necessary. Since entering into that agreement, Exide has asserted and left open the claim that no evidence exists to show that lead deposits on the trailer park soils originated from the Exide plant. Such being the case, the EPA investigation and comparison of lead-soil particles from the Exide facility and the trailer park was reasonable and necessary.

Regardless of all the Company's assurances of its willingness to negotiate and conduct cleanup, not a single response action (in the field) has been conducted at the site.

Exide has never retracted its claim, presented by its consultant and expert in the investigation report, that there is no evidence showing that there is any link between lead in soils at Westgate and plant operations at the Exide plant. EPA and DEHEC have been faced with such potential evidence of the lack of Exide liability since January 1997, the date of the Exide site investigation report. In the meantime, Exide has continuously offered to negotiate cleanup while steadfastly refusing to physically cleanup a site on which people, including children, exhibiting substantial lead blood levels, reside and traffic.

This letter is to notify Exide that EPA past response costs of \$381,346.05, incurred at the Westgate Trailer Park site, are due from Exide, as demanded by letter of May 14, 1999. This is EPA's final demand, and, upon Exide's failure to pay within twenty (20) days of receipt of this letter the full amount demanded, EPA will assume that Exide does not intend to

initially refused any payment of such costs as not required due to the fact, according to Exide's calculation, that any action pursued for their payment would be time-barred under the applicable statute of limitations. When EPA met that response with proof that the statute has not yet expired, Exide offered to negotiate a compromise of the costs demanded. Exide's May 28, 1999 letter contains Exide's latest offer of compromise, arguing that Exide announced its willingness, in the June 1997 letter to DEHEC, to meet with DEHEC and develop goals for "future activity" at Westgate.

The documents delivered to EPA in May 1999 contain numerous assurances of Exide's willingness to discuss and negotiate the preparation and implementation of a remedial action plan for cleanup at Westgate. Such assurances date back to the April 1996 consent order with the State, and continue up to and through the date of Exide's letter of May 28, 1999 to EPA. Exide agreed under the State's consent order to conduct remedial action if DEHEC determined that cleanup was necessary. Since entering into that agreement, Exide has asserted and left open the claim that no evidence exists to show that lead deposits on the trailer park soils originated from the Exide plant. Such being the case, the EPA investigation and comparison of lead-soil particles from the Exide facility and the trailer park was reasonable and necessary.

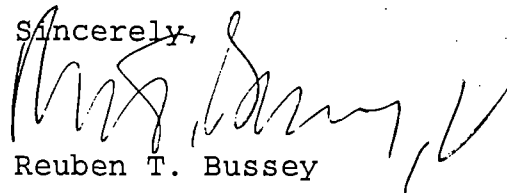
Regardless of all the Company's assurances of its willingness to negotiate and conduct cleanup, not a single response action (in the field) has been conducted at the site.

Exide has never retracted its claim, presented by its consultant and expert in the investigation report, that there is no evidence showing that there is any link between lead in soils at Westgate and plant operations at the Exide plant. EPA and DEHEC have been faced with such potential evidence of the lack of Exide liability since January 1997, the date of the Exide site investigation report. In the meantime, Exide has continuously offered to negotiate cleanup while steadfastly refusing to physically cleanup a site on which people, including children, exhibiting substantial lead blood levels, reside and traffic.

This letter is to notify Exide that EPA past response costs of \$381,346.05, incurred at the Westgate Trailer Park site, are due from Exide, as demanded by letter of May 14, 1999. This is EPA's final demand, and, upon Exide's failure to pay within twenty (20) days of receipt of this letter the full amount demanded, EPA will assume that Exide does not intend to

resolve its liability for contamination on this site and EPA will proceed accordingly.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Reuben T. Bussey', with a large, stylized flourish at the end.

Reuben T. Bussey

cc: Billy Bright
Program Services Branch
Waste Management Division